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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1258

D. M. CAROTHERS, SPENCER J. SCOTT AND LEE PRICE, A COPARTNERSHIP, DOING BUSINESS AS ALLRIGHT PARKING SYSTEM, PETITIONERS

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the Administrator (R. 70–80), and of the Acting Administrator (R. 104–107) are not reported. The opinion of the United States Emergency Court of Appeals (R. 126–129) has not yet been reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on April 11, 1945 (R. 130). The petition for a writ of certiorari was filed on May 11, 1945. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 32, 50 U. S. C. App. (Supp. III) 924 (d), as amended by the Stabilization Extension Act of 1944, c. 325, 58 Stat. 643 (herein sometimes termed "the Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTION PRESENTED

Whether the Price Administrator and the Emergency Court erred in holding that petitioners' charges at their parking lot are subject to regulation under Sections 2 (a) and 302 (c) of the Emergency Price Control Act of 1942, which authorize the establishment of maximum prices for "services rendered * * * in connection with the * * * storage * * * of a commodity."

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and of Maximum Price Regulation No. 165, as amended, are set out in the Appendix, *infra*, pp. 8–10.

STATEMENT

On December 12, 1943, the petitioners instituted their so-called "Park and Lot Space Rental Plan" at their parking lot located at 1014 Main Street, Dallas, Texas (R. 14, 126). The parking lot contains fifty spaces, arranged so that every car space is accessible to a driveway running through the property, each car space being marked off between lines eight feet apart and arranged at an angle so that automobiles occupying the spaces may be easily driven from the driveways into the spaces without the necessity of backing or cutting wheels (R. 11, 126). The customer drives the car upon one of the spaces, parks and locks it, and retains the key (R. 11, 126). A ticket is issued to the customer which states that the petitioners are not "responsible in case of fire or theft or for damage

or injuries inflicted by other than [their] employees" (R. 120). The car remains upon the space until reclaimed by the customer. There is a part-time cashier upon the lot, but no car attendant and no watchman. Petitioners light and clean their parking lot and generally keep it in a suitable condition (R. 14–15, 129). The customer pays the cashier, or, in the cashier's absence, deposits the correct amount in an envelope provided for the purpose and drops the envelope through an opening in the office door (R. 112–113, 126).

Under Maximum Price Regulation No. 165, as amended, issued on August 13, 1943 (Appendix, *infra*, p. 10), the Price Administrator established maximum prices covering petitioners' parking facilities. On February 14, 1944, petitioners filed a protest, pursuant to Section 203 (a) of the Act, objecting to the Regulation as interpreted by the Administrator to cover their operations. On May 31, 1944, the Administrator issued an order (R. 68–69), accompanied by an opinion (R. 70–80), denying the protest insofar as the petitioners claimed that the Regulation was beyond the Administrator's statutory authority.[1] The petitioners requested reconsideration (R. 81–92), and on September 27, 1944, the Acting Administrator issued an order (R. 102–103), accompanied by an opinion (R. 104–107), denying the protest so far as relief had not theretofore been granted.

[1] The relief granted is not material to the issue here presented.

Petitioners, on October 23, 1944, filed their complaint with the Emergency Court of Appeals (R. 109–113). On April 11, 1945, the Emergency Court of Appeals entered its judgment dismissing the complaint (R. 130).

ARGUMENT

Both the Price Administrator (R. 76) and the Emergency Court (R. 129) have found, on the particular facts of this case, that petitioners render storage service. Petitioners' first claim is that they do not come within the provisions of Section 302 (c) of the Act (Appendix, *infra*, p. 8) "because they merely rent real estate and furnish no services whatever to the car owner renting same or his car" (R. 112, Br. 3). But the Price Administrator has found the facts to be otherwise (R. 76, note 6) and has been sustained by the Emergency Court, which pointed out (R. 129) that petitioners—

> mark off their lot with suitable spaces for the parking of automobiles. They light it, clean it and keep it in suitable condition. They provide a common entrance for the use of all those who desire to store their cars upon the lot as well as a common means for exit.

These facts are apparently conceded (Pet. 11, 15), and the findings based thereon will not be set aside on review. See *Yakus* v. *United States*, 321 U. S. 414, 437; *Philadelphia Coke Co.* v. *Bowles*, 139 F. 2d 349, 354 (E. C. A.).

In ruling that the petitioners render storage services, the Administrator has applied the statutory provisions to the particular facts of this case.

Neither the Administrator nor the Emergency Court has held that "one who merely rents a piece of ground to the owner of an automobile in order that the latter may store his car upon it, without more, is * * * engaged in rendering a storage service within the meaning of the Act" (R. 129). Finding more than mere rental of space, the Administrator has simply held that what the petitioners do is sufficient to bring them within the coverage of the Act. If he has made no "clear cut mistake of law," his ruling cannot be set aside on review. Cf. *Commissioner* v. *Scottish American Co.*, 323 U. S. 119, 123; *Yakus* v. *United States, supra; Cudahy Bros. Co.* v. *Bowles*, 142 F. 2d 468, 470 (E. C. A.)

Petitioners attempt to overcome this obstacle in two ways. They urge first that if the statute confers any authority on the Administrator in this situation, it is solely the authority, "if there are such services, * * * to regulate the price of such services" (Pet. 15). But petitioners offer nothing in support of this contention and, indeed, do not suggest that the Act may not be validly applied to the total charges assessed at ordinary parking lots (R. 73, note 2). Storage differs from mere space rental in that services are offered to the customer; the rental of space and the services involved are inseparable. Section 302 (c) covers services in connection with "storage," and contains no intimation that Congress intended charges for storage to be allocated between a charge for space and a charge for incidental services, with only the latter subject to regulation. Consequently, Section 302 (c) has been held to

cover charges for storage. *Lincoln Savings Bank* v. *Brown*, 137 F. 2d 228 (E. C. A.).

Secondly, petitioners contend (Br. 33) that whenever "Congress has authorized the regulation of the retail price of a commodity it has also authorized the regulation of the wholesale price. * * * The Administrator makes no attempt to control the wholesale rental paid by petitioners" and, it follows, petitioners urge, that Congress could not have contemplated regulation of petitioners' charges to its customers. This argument is patently fallacious. It is clear that price controls have been validly applied to all sorts of commodity sales, even though, as petitioners point out (Br. 10), retailers of these commodities pay rent at rates uncontrolled by the Act. Recognition must, of course, be given, and adjustment made, "for such relevant factors as * * * general increases or decreases in costs of production * * * and general increases or decreases in profits". Section 2 (a) of the Act.

Finally, it is clear that the court below, in sustaining the finding of the Administrator that petitioners furnish storage services, did not create a conflict between its ruling and that of this Court in *Kirschbaum Co.* v. *Walling*, 316 U. S. 517 (cf. Pet. 11). That case arose under the Fair Labor Standards Act, and, so far as here relevant, this Court held only that the loft buildings there involved were not "service establishments" within the exemption provisions of that Act (p. 526). Passing not only the patent factual differences between a loft building and peti-

tioners' parking lot but also the fact that the *Kirschbaum* ruling was made with reference to an exempting clause while we are here concerned with a general coverage provision in a statute designed to combat inflation, the *Kirschbaum* decision affords petitioners no aid, for the court below held that it was unnecessary for it "to determine whether the complainants operate a service establishment for the servicing of automobiles within the meaning of Section 302 (c)" (R. 129).

CONCLUSION

The court below properly sustained the Administrator's finding that petitioner rendered services in connection with storage, and correctly held that petitioners' prices are subject to regulation under the Emergency Price Control Act of 1942. In so doing, the Emergency Court has not decided a question of sufficiently general importance to warrant review by this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1945.